



Before the
FEDERAL MARITIME COMMISSION PM 3:58
Washington, D.C. 20573

RECEIVED
OFFICE OF THE SECRETARY
FEDERAL MARITIME COMM

Docket No. 07-05

K.E.I. ENTERPRISE dba KEI LOGIX v. GREENWEST ACTIVEWEAR, INC.

COMPLAINT

1. Complainant K.E.I. Enterprise dba KEI Logix is a California corporation with its principal place of business at 241 E. Redondo Beach Boulevard, Gardena, CA 90248. Complainant is an Ocean Transportation Intermediary licensed by this Commission to provide Non Vessel Operating Common Carrier services.

2. Respondent Greenwest Activewear, Inc. is a company whose place of incorporation is unknown with its principal place of business, on information and belief, at 399 West Artesia Boulevard, Compton, CA 90220. On information and belief, Respondent exports fabric and other goods for sales and distribution outside the United States.

3. During 2006, Complainant undertook to transport for Respondent fabric from the United States to Guatemala. While these goods were in transit by an inland carrier in Guatemala, they were stolen. The goods have not been recovered. Respondent claimed for the alleged value of the fabric and consequential damages. Complainant asserted its defenses and declined the claim. In response and initially, Respondent refused to pay freight due on other shipments, and Complainant refused to release these other shipments. Subsequently, Complainant and Respondent continued to do business, while attempting

to resolve their dispute about the stolen cargo. Respondent paid freight slowly, so a large amount of freight was due, and the corresponding cargo was held by Complainant. Eventually, the parties reached a compromise whereby Respondent agreed to pay Complainant freight due in the amount of \$101,019.08, and Complainant agreed to release all of Respondent's cargo (Cargo) in the possession of Complainant. On May 16, 2007, Respondent delivered to Complainant three post-dated checks for \$40,697.43, dated May 18, 2007; \$21,838.01, dated May 25, 2007, and \$38,473.64, dated June 15, 2007, and Complainant released the Cargo on the same day. On May 17, 2007, Complainant was informed by Respondent's bank that Respondent had placed a stop payment order on these three checks, even though Respondent's account had sufficient funds to pay them. When Complainant deposited the first of these checks, payment was refused and the check returned with the notation "Stop Payment". Attached as Exhibit A is a true and correct copy of the three checks, the first returned unpaid by Respondent's bank with the notation "Stop Payment". On information and belief, Respondent knowingly, willfully and in bad faith induced Complainant to relinquish the Cargo and lose its possessory maritime lien on the Cargo. During the course of their business and shortly before the three checks were delivered and the Cargo released, Respondent without explanation withheld \$7,000.00 from freight payments due to Complainant. On information and belief, the withholding of the \$7,000.00 by Respondent was part of its plan fraudulently to obtain release of the Cargo. By letter of May 24, 2007 (Exhibit B), Complainant demanded payment of the freight due from Respondent. Respondent refuses to pay.

4. Respondent violated 46 U.S.C. §41102(a) by purportedly making payment of the freight by post-dated checks, while knowing it would stop payment on these checks as soon as Complainant released the Cargo. Accordingly, Respondent “knowingly and willfully, directly or indirectly, by means of . . . any . . . unjust or unfair device or means, [did] obtain or attempt to obtain ocean transportation for property at less than the rates or charges that would otherwise apply;” prohibited by said section.

5. Complainant is authorized to make this Complaint by 46 U.S.C. §41301(a) which says “[a] person may file with the Federal Maritime Commission a sworn complaint alleging a violation of this part, except section §41307(b)(1)” and “may seek reparations for an injury to the complainant caused by the violation.” By reason of the facts stated in the foregoing paragraphs, Complainant has been (and is being) subjected to injury as a direct result of the violation by the Respondent.

6. Complainant has been injured and damaged in the sum of \$108,019.08.

7. Complainant prays that Respondent be required to answer the charges herein; that after due hearing, an order be made commanding Respondent to cease and desist from the aforesaid violation of the Act; to pay to Complainant by way of reparations for the unlawful conduct described above the sum of \$108,019.08 with interest and attorney’s fees under 46 U.S.C. §41305(b), and any other sums as the Commission may determine to be proper; and that such further order or orders be made as the Commission determines to be proper in the premises.


8. Complainant requests that the hearing be in Los Angeles, California.

9. As required by Rule 62(e), Complainant states that informal dispute resolution procedures were not used prior to filing this Complaint, and Complainant did not consult

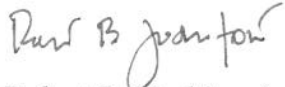
with the Commission Dispute Resolution Specialist about utilizing alternative dispute resolution (ADR) under the Commission's ADR program.

Dated at Los Angeles, California, this 31st day of ^{may int}~~June~~, 2007.

K.E.I. Enterprise dba KEI Logix

By 
Kevin Kim
Director

Respectfully submitted,



Robert B. Yoshitomi
Walter T. Johnson
NIXON PEABODY LLP
555 Fifth Street, 46th Floor
Los Angeles, CA 90013-1025
Telephone: 213/629-6000
Facsimile: 213/629-6001
E-mail: ryoshitomi@nixonpeabody.com
Attorneys for K.E.I. Enterprise dba KEI Logix

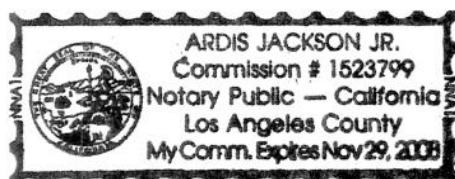
VERIFICATION


State of California)
) ss:
County of Los Angeles)

Kevin Kim, first duly sworn on oath deposes and says he is a Director of K.E.I. Enterprise dba KEI Logix and is the person who signed the foregoing Complaint; that he has read the Complaint and that the facts stated therein, upon information received from others, affiant believes to be true.

Subscribed and sworn to before me a Notary Public in and for the State of California, County of Los Angeles, this 31st day of ~~June~~ ^{may int} 2007

[seal]




Ardis Jackson Jr.
Notary Public

NARA BANK
3731 Wilshire Blvd., Suite 400
Los Angeles, CA 90010

2690

16-4172/1220
30

GREENWEST ACTIVEWEAR INC

399 W. ARTESIA BLVD.
COMPTON, CA 90220
310-635-7000

5/18/2007

PAY TO THE
ORDER OF

KEI LOGIX

**40,697.43

Forty Thousand Six Hundred Ninety-Seven and 43/100

DOLLARS

KEI LOGIX
241 E. REDONDO BEACH BLVD.
GARDENA, CA 90248

"STOP PAYMENT"

[Signature]

MEMO

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⑈0004069743⑈

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2623178770 2623252318

ken
05182007

Exhibit A

NARA BANK
3731 Wilshire Blvd., Suite 400
Los Angeles, CA 90010

GREENWEST ACTIVEWEAR INC
399 W. ARTESIA BLVD.
COMPTON, CA 90220
310-635-7000

2692

16-4172/1220
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6/15/2007

PAY TO THE
ORDER OF

KEI LOGIX

**38,473.64

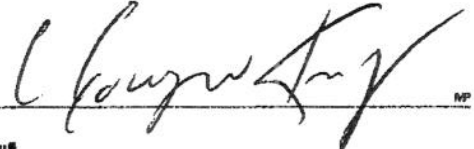
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Thirty-Eight Thousand Four Hundred Seventy-Three and 64/100*****

DOLLARS

KEI LOGIX
241 E. REDONDO BEACH BLVD.
GARDENA, CA 90248

MEMO



⑈002692⑈ ⑆122041727⑆ 3003448101⑈

NARA BANK
3731 Wilshire Blvd., Suite 400
Los Angeles, CA 90010

GREENWEST ACTIVEWEAR INC
399 W. ARTESIA BLVD.
COMPTON, CA 90220
310-635-7000

2691

16-4172/1220
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5/25/2007

PAY TO THE
ORDER OF

KEI LOGIX

**21,848.01

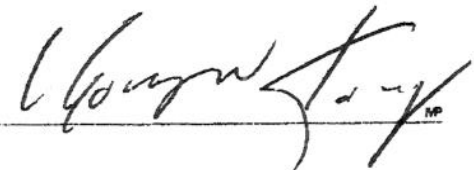
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Twenty-One Thousand Eight Hundred Forty-Eight and 01/100*****

DOLLARS

KEI LOGIX
241 E. REDONDO BEACH BLVD.
GARDENA, CA 90248

MEMO



⑈002691⑈ ⑆122041727⑆ 3003448101⑈

NIXON PEABODY^{LLP}
ATTORNEYS AT LAW

Exhibit B

Gas Company Tower
555 West Fifth Street, 46th Floor
Los Angeles, CA 90013
(213) 629-6000
DIRECT: (213) 629-6060
FAX: (213) 629-6001
E-MAIL: ryoshitomi@nixonpeabody.com

May 24, 2007

By FedEx and by Facsimile to 310/635-7100

Greenwest Activewear, Inc.
399 West Artesia Boulevard
Compton, CA 90220

Gentlemen:

We represent KEI Enterprises dba KEI Logix (KEI) about freight charges you owe to KEI.

We understand the facts are as follows. A container of your cargo moving under a KEI bill of lading was stolen in 2006 in Guatemala while in the custody of an inland carrier. The container and goods have not been recovered. For other goods handled by KEI, you refused to pay the freight charges, so KEI refused to release that cargo. As a compromise, on May 16, 2007, you tendered three post-dated checks to KEI totaling \$101,019.08 (\$40,697.43 dated May 18, 2007; \$21,848.01 dated May 25, 2007; and \$38,473.64 dated June 15, 2007) to pay outstanding freight, and KEI released your cargo the same day. On May 17, 2007, KEI learned that you had placed a stop payment order on these three checks, even though the bank acknowledged you had sufficient funds on deposit to pay the check. In the course of other recent freight payments, you also improperly withheld \$7,000.00 from KEI. Accordingly, KEI demands \$111,019.08 forthwith and without prejudice to other claims.

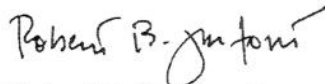
Your payment of the freight is legally required by the Shipping Act of 1984, now codified in 46 U.S.C. 40101, et seq. (Shipping Act). If litigation is necessary, KEI will aggressively pursue all legal remedies. This includes a Complaint for damages at the Federal Maritime Commission for your violation of Section 10(a)(1) of the Shipping Act by your "knowingly and willfully, directly or indirectly, . . . by unjust or unfair device or means obtaining ocean transportation at less than applicable rates". There is controlling authority adverse to you in *Waterman Steamship Corp. v. General Foundries Inc.*, 26 S.R.R. 1424 (FMC 1994)(shipper violated Section 10(a)(1) by tendering checks to pay freight, accepting the cargo, and then stopping payment on the checks). See also *Safmarine Container Lines v. Garden State Spices*, 28 S.R.R. 1621 (ALJ 2000)(shipper violated Section 10(a)(1) by tendering bad checks and dishonoring the settlement agreement; carrier awarded five times the amount due per shipment plus interest); *Global Transporte Oceanico v. Coler Ocean Independent Lines*, 28 S.R.R.1160

(ALJ 1999)(shipper violated Section 10(a)(1) by tendering a bad check and failing to honor an agreement to pay freight; carrier awarded the full amount of its claim plus interest); Classic International v. Young Hee Ko, 28 S.R.R.1086 (ALJ 1999)(shipper violated Section 10(a)(1) by tendering bad checks; carrier awarded reparations, interest and attorney's fees); and 46 C.F.R. 545.2. The result will be an award requiring you to pay to KEI the full \$111,019.08 plus interest and attorney's fees, available under Section 11(g) of the Shipping Act. We believe the FMC Bureau of Enforcement will be interested in your Shipping Act violations and, if so, will demand statutory penalties of up to \$30,000.00 per day for a continuing violation under Section 13(a) of the Shipping Act. We understand that the freight has been unpaid for several months which computes to a penalty of millions of dollars.

We understand that you may claim for loss of the cargo stolen in Guatemala. Please understand that KEI has a complete defense under its bill of lading. Paragraph 4(b) of the KEI bill of lading says: "If loss or damage occurs while the Goods or packages are in the custody of a participating domestic or foreign Carrier, only the participating domestic or foreign Carrier(s) shall be responsible therefore, and any liability of such participating domestic or foreign Carrier(s) shall be determined in respective order by the terms, conditions, and provisions of the applicable participating domestic or foreign Carrier's Bill(s) of Lading, whether issued or not, tariff(s), and the law compulsorily applicable in the circumstances." Therefore, KEI has no liability for loss if the loss occurs when another carrier had custody of the goods, as is the case here. Also, paragraph 4(f) of the KEI bill of lading says that, in arranging transportation via other participating carriers, KEI is acting solely as agent for the shipper "without any other responsibility whatsoever, and it assumes no responsibility as carrier for such domestic or foreign transportation."

We request that you or your counsel respond to the undersigned by May 30, 2007. If we do not have a satisfactory response by then, KEI will consider itself at liberty to proceed as described above. We respectfully suggest that you obtain the advice of counsel so that you may be advised of the gravity of your position.

Very truly yours,



Robert B. Yoshitomi
of NIXON PEABODY LLP

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